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In re Application of
MEHTA et al.
U.S. App. No.: 10/552,322
PCT No.: PCT/IB03/01266
Int. Filing Date: 07 April 2003
Priority Date: None
Attorney Docket No.: RLL-313US
For: OXAZOLIDINONE DERIVATIVES AS
ANTIMICROBIALS

DECISION ON PETITION
UNDER 37 CFR 1.182

This decision is issued in response to the "Petition To Withdraw The Holding Of Abandonment Under 37 CFR 1.181(b) and 1.182" filed 31 January 2008 (treated as a petition under 37 CFR 1.182). Deposit Account No. 50-0912 will be charged the \$400 petition fee.

BACKGROUND

On 07 April 2003, applicants filed international application PCT/IB03/01266 which claimed no priority date and which designated the United States. On 21 October 2004, a copy of the international application was transmitted to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB"). Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 21 October 2004.

On 07 October 2005, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, the basic national fee.

On 20 June 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 was required.

On 05 December 2007, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned with respect to the United States for failure to respond to the Notification Of Missing Requirements.

On 31 January 2008, applicants filed the petition to withdraw the holding of abandonment considered herein. In the petition, applicants assert that they timely

submitted the materials required by the Notification Of Missing Requirements. Specifically, applicants assert that a declaration was filed on 19 January 2007, however, applicants note that the submission was submitted under an incorrect application number (10/522,322).

DISCUSSION

Where, as here, materials have been filed under the wrong application number, a grantable petition under 37 CFR 1.182 is required to confirm the previous submissions and to have such submissions treated as having been filed in the present application on the respective filing dates, as required to withdraw the holding of abandonment. Such a petition requires: (1) payment of the petition fee; (2) the presence in the earlier submissions of an adequate reference to the correct application, and (3) evidence confirming the previous submissions (including copies of such materials).

In order to confirm the purported 19 January 2007 submission, applicants have provided copies of return postcards itemizing the materials filed by applicants on 19 January 2007 bearing USPTO receipt stamps for the respective dates, as well as copies of materials which appear to correspond to items filed on 19 January 2007. With respect to the declaration filed on 19 January 2007, the original submission has been located and transferred to the present application file. This document bears a USPTO receipt stamp dated 19 January 2007, confirming the asserted filing date. The 19 January 2007 filing of the declaration is therefore confirmed.

CONCLUSION

Applicants' petition under 37 CFR 1.182 is GRANTED.

In view of the receipt of the declaration filed 19 January 2007, which was a timely response to the Notification of Missing Requirements mailed 20 June 2006, the holding of abandonment is hereby WITHDRAWN.

This application will be given an international filing date of 07 April 2003 and a date of 19 January 2007 under 35 U.S.C. 371. The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision.



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